

1358

No.

4071

United States
Circuit Court of Appeals
For the Ninth Circuit.

CLARENCE E. LEWIS,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

AUG 1 1919

U.S. DISTRICT COURT

No.

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CLARENCE E. LEWIS,

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vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

UNITED STATES,)
Plaintiff and respondent,)
 -vs-) CITATION ON APPEAL
CLARENCE E. LEWIS,)
Defendant and appellant.)

UNITED STATES OF AMERICA—SS

THE PRESIDENT OF THE UNITED STATES
STATES, to JOSEPH C. BURKE, Esq., United
States Attorney in and for the Southern District of
California, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Appeals,
for the Ninth Circuit, to be holden at the City of San
Francisco, in the State of California, within thirty
days from the date hereof, pursuant to an order allow-
ing an appeal of record in the clerk's office of the
United States District Court for the Southern District
of California, Southern Division, wherein Clarence E.
Lewis is appellant, and you are appellee, to show cause,
if any there be, why the decree rendered against the
said appellant, as in the said order allowing appeal
mentioned, should not be corrected, and why speedy
justice should not be done to the parties in that behalf.

WITNESS the Hon. Benjamin F. Bledsoe, United
States District Judge for the said District, this 9th
day of July, 1923.

Bledsoe

United States District Judge

[Endorsed]. No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent, -vs- CLARENCE E. LEWIS, Defendant and appellant. CITATION ON APPEAL Received cop of within this 9th day July 1923 Mack Meader Asst U. S. Atty Filed Jul 9 1923 at — min. past — o'clock — A M Chas. N. Williams, clerk L L Aronson deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277 C L R Bk 8/163

No. ———

Filed —————

Viol: Harrison Narcotic Act of February 24, 1919
amending Act of December 17, 1914.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION.

At a stated term of said of said Court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of January in the year of our Lord one thousand nine hundred and twenty-two:

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oaths present:

That CLARENCE E. LEWIS, whose full and true

name, other than as herein stated, is to the Grand Jurors unknown, late of the Southern Division of the Southern District of California heretofore, to-wit: on or about the 22nd day of April, A. D. 1922, at or near Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, willfully, unlawfully and feloniously deal in and distribute certain narcotics, to-wit: one ounce of cocaine and two packages containing about one ounce of each morphine sulphate, without having registered and paid the special tax as required and imposed by Section One of an Act of Congress approved February 24, 1919 amending an Act of Congress approved December 17, 1914, and known as the Harrison Narcotic Act; and the said CLARENCE LEWIS was then and there a person required to register and pay the special tax under and by the above said Act and (1) Section One thereof, that is to say the said cocaine and morphine sulphate as aforesaid were not then and there contained in the original stamped packages having affixed thereto and bearing thereon appropriate tax paid stamps as required by the said Harrison Narcotic Act, and the said cocaine was then and there a compound, manufacture, salt derivative and preparation of coca leaves, and the said morphine sulphate was then and there a compound, manufacture, salt, derivative and preparation of opium;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. (2)

SECOND COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That CLARENCE E. LEWIS, whose full and true name, other than as herein stated, is to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 22nd day of April, A. D. 1922, at or near Los Angeles, County of Los Angeles, within the state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, willfully, unlawfully and feloniously sell, barter, exchange or give away a certain derivative of coca leaves and a certain derivative of opium, to-wit: one ounce of cocaine and two packages containing about one ounce each of morphine sulphate, not in pursuance of a written order issued in blank for that purpose by the Commissioner of Internal Revenue; and the said defendant was then and there a person required to register and pay the special tax by and under Section One of an Act of Congress approved February 24, 1919, amending an Act of Congress approved December 17, 1914, known as the Harrison Narcotic Act.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Joseph C. Burke
United States Attorney

Mark L. Herron

Assistant United States Attorney.

NO. 4253 CRIM
UNITED STATES DISTRICT COURT,
Southern District of California
SOUTHERN DIVISION.
THE UNITED STATES OF AMERICA

vs.

CLARENCE E. LEWIS.

INDICTMENT

Viol: Harrison Narcotic Act
of Feb. 24, 1919 amending
Act of Dec. 17, 1914

A true bill,

Chas. M. Stone

Foreman

Filed

June 2 1922

CHAS. N. WILLIAMS, Clerk

By Douglas Van Dyke

Deputy Clerk

Bail \$5,000

At a stated term, to wit, the January A. D. 1922
Term of the District Court of the United States,
within and for the Southern Division of the
Southern District of California, held at the court
room thereof, in the city of Los Angeles, on
Monday the 19th day of June in the year of
our Lord one thousand nine hundred and twenty
two.

PRESENT: THE HONORABLE BENJAMIN F.
BLEDSOE, DISTRICT JUDGE.

United States Of America, Plaintiff)
vs	)No. 4253
Clarence E. Lewis,	Defendant)Crim. S. D.

This cause coming on for the entry of plea of defendant Clarence E. Lewis; Mack Meader, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; defendant being present in court with his attorney Warren L. Williams, Esq., and having been required to plead, thereupon interposes his plea of NOT GUILTY, and good cause appearing therefor, it is now by the court ordered that this cause be continued to the July Term for setting for trial.

At a stated term, to wit, the January A. D. 1922 Term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the City of Los Angeles, on Monday the 5th day of June, in the year of our Lord one thousand nine hundred and twenty two.

PRESENT: THE HONORABLE BENJAMIN F. BLEDSOE, DISTRICT JUDGE.

United States of America, Plaintiff)
vs.	)No. 4253
Clarence E. Lewis,	Defendant)Crim. S. D.

This cause coming on at this time for arraignment and plea of defendant Clarence E. Lewis; Mack Meader, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; defendant being present in court with his attorney S. S. Silverton, Esq., and defendant having been arraigned and having waived the reading of the Indictment and stated his name to

be as therein stated; now, upon motion of counsel for the defendant, it is by the court ordered that this cause be continued to June 12th, 1922, for the entry of plea of defendant herein,

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

SOUTHERN DIVISION.

THE UNITED STATES	)	No. 4253 Criminal
OF AMERICA,)	
-vs-	Plaintiff,)	REQUEST FOR
CLARENCE E. LEWIS,	)	INSTRUCTIONS
Defendant.)	

The defendant, CLARENCE E. LEWIS, in the above entitled matter hereby requests the court to instruct the Jury by giving to the Jury each and every one of the instructions attached hereto and marked Numbers 1 to —, inclusive.

DATED: February —, 1923.

Attorney for Defendant.

In considering the evidence if you can reasonably account for any fact in this case on a theory or hypothesis which will admit of defendant's innocence, it is your duty under the law to do so and to reject any theory or supposition on which it might point to his guilt, even though such theory may be reasonable and much more probable than the one which admits of his innocence.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

You are instructed that a conviction cannot be had on the testimony of an accomplice unless such accomplice is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense. And you are further instructed that the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

You are instructed that before you can convict the defendant in this case it must appear from the evidence beyond a reasonable doubt that the defendant and not somebody else, committed the crime charged in the information, if such offense was in fact committed. It is not sufficient that the evidence shows that the defendant or somebody else committed the crime, nor that the probabilities are that the defendant and not somebody else committed the crime, unless those probabilities are so strong as to remove all reasonable doubt as to whether the defendant or somebody else is the guilty party.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

You are instructed that testimony with regard to verbal statements should be received with great caution. This evidence, consisting, as it does, in the mere

repetition of oral statements, is subject to much imperfection and mistake, in consequence of the person speaking not having clearly expressed his or her meaning, or, in consequence of the witness having misunderstood him or her, as the case might be. It frequently happens also that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the person in fact did say. You are instructed that this kind of testimony should be scanned closely, and that it is to be received with caution.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

The law under which the defendant was indicted was designed first for purposes of Revenue and second to regulate the traffic in drugs; it was designed therefore, to do away with the unlawful purchasing, selling, distributing, dispensing and dealing in drugs and if you find that the defendant had the said drugs in his possession not for any of the aforesaid purposes, it is your duty to acquit him.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

In considering the weight and effect to be given to the evidence of the defendant, you may consider his manner and the probability of his statements taken in connection with all the evidence in the case; and in judging of the defendant who has testified before you

you are in duty bound to presume that he has spoken the truth ,and unless that presumption has been legally regutted, his evidence is entitled to full credit. If his testimony standing alone or taken in connection with other facts and circumstances in the case, raises a reasonable doubt in your minds as to his guilt, it will be your duty to act upon that doubt and acquit him.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

The Jury is advised to acquit the defendant, CLARENCE E. LEWIS.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

The Court charges you that if any witness has willfully sworn falsely as to any material matter, it is your duty to distrust the entire evidence of such witness.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

(Approved People vs. Stevens)
141 Cal. 488.

It is not your duty to look for some theory upon which to convict the defendant, but, on the contrary, it is your duty, and the law requires you, if you can reasonably do so, to reconcile any and all circumstances

that have been shown with the innocence of the defendant, and so acquit.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

You are instructed that in this case the law raises no presumption against the defendant, and the fact that he is charged with the crime alleged and that an indictment has been filed against him is no evidence of his guilt and should raise no presumption of such act in the minds of the jury, but every presumption of law is in favor of his innocence and in order to convict him with the crime charged in the indictment every material fact necessary to constitute such crime must be proved beyond reasonable doubt.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

The defendant in this case is presumed by law to be innocent of any crime until *guilt* of such crime and every essential element thereof is established beyond a reasonable doubt.

It is incumbent upon the prosecution to prove every material element of the offense charged beyond a reasonable doubt, and if you have such reasonable doubt as to whether they have proved or have failed to prove any one essential and material fact going to make up guilt, it is your sworn duty to acquit.

It is by law considered better that any number of guilty persons should escape than to adopt a course

under which an innocent person might be convicted because of an erroneous conclusion of court or jury.

Hence it is that a defendant cannot be convicted unless his guilt is established by more than a preponderance of evidence. It is not enough that you should believe in his guilt to such an extent that would make you willing to act in the ordinary affairs of life, even of the greatest importance. This will not do. Before you can find this defendant guilty, you must be satisfied of his guilt to a moral certainty and beyond a reasonable doubt.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

You are instructed that if the evidence introduced before you shows that the defendant was entrapped by Police Officers into the commission of the purported acts charged against him in this indictment, you are instructed that the testimony of all such officers and agents concerned in leading the defendant into crime is to be scanned by you with caution. The practice of entrapping persons into the commission of crimes by authorities has frequently been condemned by Courts and Juries alike, since human nature is frail enough at best, and requires no encouragement in wrong-doing. If you believe from the evidence that the said Police Officers took active steps to lead the accused into the commission of the purported acts and that without such encouragement or solicitation from the authorities he would not have committed or tried

to commit the acts charged, then in that event I instruct you to find him not guilty.

DEFENDANT'S INSTRUCTION NO.
GIVEN:

Judge.

No. 4253

Dept.—

In The
DISTRICT COURT OF THE U. S.
IN AND FOR THE
SO. DIST.
SOUTHERN DIVISION.

THE UNITED STATES OF AMERICA

Plaintiff

vs.

CLARENCE E. LEWIS

Defendant.

INSTRUCTIONS TO JURY.

Filed

Feb 7, 1923

Chas. N. Williams, Clerk

Edmund L. Smith, Deputy.

Refused

Bledsoe J.

Warren L. Williams

419 Ferguson Bldg.

307 So. Hill Street

Los Angeles, Cal.

Bdwy. 7881

Bdwy. 7880

Attorneys for Defendant.

At a stated term, to wit: The January Term, A. D., 1923 of the District Court of the United States

of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES, on Wednesday the 7th day of February, in the year of Our Lord one thousand nine hundred and twenty-three Present:

The Honorable BENJAMIN F. BLEDSOE District Judge.

UNITED STATES OF AMERICA,)	
	Plaintiff,)
	vs	) No. 4253
Clarence E. Lewis,	Defendant	) Crim. S. D.

This cause coming on at this time for trial of defendant Clarence E. Lewis before this court and a jury to be impanelled herein; Mack Meader, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendant being present in court with his attorney W. L. Williams, Esq; Ross Reynolds being also present in his official capacity as stenographic reporter of the testimony and proceedings; and counsel for the respective parties having announced their readiness to proceed with the trial of this cause, it is by the court ordered that this cause be *proceed* with and that a jury be impanelled herein, and thereupon the following twelve names were drawn from the jury box, to wit:

Edward, N. T.; Welch, Edward T.; Whitley, Ross E.; Baeyertz, John T. F.; Cocker, Ed.; Weishaar, Rudolph G.; Levy, Isaac O., Reynolds, W. C.; Fitch, Henry W.; Thomas, Ray R.; Eberle, John W.; Esmay, Geo.; and said petit jurors having been called and sworn on void dire and passed for cause by the court

and by counsel for the respective parties; and
Ross E. Whitley having been peremptorily challenged
by counsel for the Government and by the court ex-
cused; and

N. T. Edwards having been peremptorily challenged
by counsel for the defendant and by the court ex-
cused; and

John T. F. Baeyertz having been peremptorily chal-
lenged by counsel for the defendant and by the court
excused;

Isaac O. Levy having been peremptorily challenged
by counsel for the plaintiff and by the court excused;

It is by the court ordered that four more petit jur-
ors' names be drawn from the jury box, said names
as drawn being as follows, to wit: Gifford, Harry
V.; Hunt, Henry B.; Green, Max L.; Curran, Chas.
P.; and said four petit jurors having been called and
sworn, on voir dire and passed for cause by the court
and by counsel for the respective parties; and

Henry B. Hunt having been peremptorily challenged
by counsel for the defendant and by the court ex-
cused;

It is by the court ordered that one more name be
drawn from the jury box, said name as drawn being
Wm. F. Gable, and said Wm. F. Gable having been
called and sworn on voir dire and passed for cause by
the court and by counsel for the respective parties; and

Counsel for the respective parties not having desired
to peremptorily challenge the petit jurors now in the
box, it is by the court ordered that said petit jurors
be sworn in a body as the jury to try this cause, said

petit jury as sworn consisting of the following named petit jurors, to wit:

THE JURY:

- | | |
|-------------------------|---------------------|
| 1. Wm. F. Gable, | 7. Chas. P. Curran, |
| 2. Edward T. Welch, | 8. W. C. Reynolds, |
| 3. Harry V. Gifford, | 9. Henry W. Fitch, |
| 4. Max L. Green, | 10. Ray R. Thomas, |
| 5. Ed Cocker, | 11. John W. Eberle |
| 6. Rudolph G. Weishaar, | 12. Geo. Esmay, |

Now, at the hour of 11:20 o'clock A. M. the court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause or any matter or thing therewith connected, and that until said cause is finally submitted to them for their deliberation under the instruction of the court they are not to speak to each other about this cause or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess for ten minutes; and at the hour of 11:00 o'clock A. M. the court having reconvened and all being present as before; and

George Moffat and W. R. Wood having been respectively called and sworn, and having respectively testified on behalf of the Government; and

In connection with their testimony there having been offered for Identification and admitted for Identification by the court on behalf of the Government the following exhibits, to wit:

U. S. Ex. No. 1 for Identification—Package of drugs.

U. S. Ex. No. 2 for Identification—Bottle drugs.

U. S. Ex. No. 3 for Identification—Flat can drugs,

U. S. Ex. No. 4 for Identification—Square box
(pasteboard) drugs,

and there having been offered in evidence by the Government and admitted in evidence by the court the following exhibits, to wit:

U. S. Ex. No. 5—one tobacco tin can

U. S. Ex. No. 6—one tobacco tin can,
and there having been offered for Identification and admitted for Identification by the court on behalf of the Government the following exhibits, to wit:

U. S. Ex. No. 7 for Identification—Carton tea box,

U. S. Ex. No. 8 for Identification—Square box
(pasteboard) drugs,

U. S. Ex. No. 9 for Identification—Pipe tobacco tin
Tuxedo,
and

T. F. O'Brien having been called, sworn and having testified on behalf of the Government, and in connection with his testimony the court having ordered, on motion of counsel for the Government, that plaintiff's exhibits Nos. 2, 3, 4, 8, and 9, heretofore admitted for Identification, be admitted in evidence and said exhibits having thereupon been admitted in evidence and marked plaintiff's exhibits Nos. 2, 3, 4, 8, and 9 respectively; and

Said T. F. O'Brien having been cross-examined by W. L. Williams, Esq. counsel for the defendant, as aforesaid, and said witness having been examined by the court;

Now, at the hour of twelve o'clock P. M. the court gives to the jury herein the aforementioned admonition and declares a recess to the hour of two o'clock P. M. and

At the hour of two o'clock P. M. the court having reconvened and all being present as before,

It is by the court ordered that the jury in this cause be excused until a jury have been impanelled in cause No 4729 Crim. and

At the hour of 2:45 o'clock P. M. the jury in this cause having returned and all being present as before; and

T. J. Mailheau having been called, sworn and having testified on behalf of the Government; and

In connection with his testimony there having been offered in evidence by Mack Meader, Esq., Assistant United States Attorney and admitted in evidence by the court over the objection of said W. L. Williams, Esq. counsel for the defendant, the following exhibit on behalf of the Government, to wit:

U. S. Ex. No. 10—Opium pipe, and

Said T. J. Mailheau having been cross examined by said W. L. Williams, Esq. on behalf of the defendant; and

Lloyd R. Yarrow having been called, sworn and having testified on behalf of the Government and cross-examined by said W. L. Williams, Esq.; and

The Government having thereupon rested; and

The motion of defendant to dismiss this cause having been denied; and

Clarence E. Lewis having been called, sworn and

having testified in his own behalf, and cross-examined by said Mack Meader, Esq. on behalf of the Government; and

Anna Earley having been called, sworn and having testified on behalf of the defendant and cross-examined by said Mack Meader, Esq. and

Blanche Jones having been called, sworn and having testified on behalf of the defendant and cross-examined by said Mack Meader, Esq. on behalf of the Government; and

Wm. McKinley Dixon having been called, sworn and having testified on behalf of the defendant;

Now, at the hour of 3:30 o'clock P. M. the court gives to the jury herein the aforementioned admonition and declares a recess for ten minutes; and

At the hour of 3:40 o'clock P. M. the court having reconvened and all being present as before and the jury being present; and

Wm. M. Dixon having resumed the witness stand and testified for the defendant and

Geo. W. Dickerson having been called, sworn and having testified on behalf of the defendant; and

John Irvin having been called, sworn and having testified on behalf of the defendant; and

Defendant having thereupon rested; and

Mack Meader, Esq. having stated there is no rebuttal; and

At the hour of 4:50 o'clock P. M. said Mack Meader, Esq. having argued to the jury on behalf of the Government; and

At the hour of 4:55 o'clock P. M. said W. L. Wil-

liams, Esq. having argued on behalf of the defendant; and

At the hour of 4:00 o'clock P. M. said Mack Meader, Esq. having closed his argument on behalf of the Govednment in rebuttal; and

At the hour of 4:05 o'clock P. M. the court having instructed the jury herein with respect to the law involved in this cause; and

At the hour of 4:30 o'clock P. M. Bailiff Vincent Mangerina having been sworn to care for the jury herein during the deliberation of its verdict; and

Juror Thomas having asked for certain testimony of witness Mailheau, which the court has read to him; and

The Jury herein having thereupon retired to deliberate upon their verdict, and at the hour of 4:35 o'clock P. M. the court having declared a recess in this cause until the coming in of the jury in this cause; and

Now, at the hour of 4:45 o'clock P. M. the jury return into court and are asked through their Foreman J. W. Eberle if they have agreed upon a verdict and said jury having replied that they have so agreed, are required to present the same, said verdict as presented and read by the clerk of the court being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. United States of America, Plaintiff vs. Clarence E. Lewis, Defendant No. 4253 Crim. S. D., WE, the Jury in the above entitled cause, find the defendant

guilty as charged in the first count of the Indictment and not guilty as charged in the second count of the Indictment. Los Angeles, California, February 7th, 1923. J. W. Eberle, Foreman.

and the verdict having been read as aforesaid and ordered filed and entered herein, it is by the court ordered that defendant be remanded to the custody of the United States Marshal and that this cause be continued to February 13th, 1923 at the hour of ten o'clock A. M. for sentence; and

On motion of said Mack Meader, Esq., it is by the court ordered that the exhibits herein be ordered withdrawn and delivered to the Narcotic Agent Wm. R. Wood, and it is further ordered by the court that the receipt for said Narcotics and the Instructions requested by the defendant, which were refused, be filed herein,

47/403

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

The United States of America, Plaintiff,)

vs.

Clarence E. Lewis,

) No. 4253

Defendant.) Crim. S. D.

We, the Jury in the above entitled cause, find the defendant Guilty as charged in the First Count of the Indictment, and Not Guilty as charged in the Second Count of the Indictment.

Los Angeles, California, February 7th, 1923.

J. W. Eberle

Foreman

Filed

Feb 7 1923

Chas. N. Williams, Clerk

Edmund L. Smith, deputy

UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION,

THE UNITED STATES)	
OF AMERICA	)	No. 4253 Crim.
	)	MOTION IN AR-
Plaintiff	)	REST OF JUDG-
-vs-	)	MENT
CLARENCE E. LEWIS,)	
Defendant)	

Comes now the defendant CLARENCE E. LEWIS, in the above-entitled and numbered action and against whom a verdict of guilty was rendered in said cause on Wednesday, the 7th day of February, 1923, and moves the Court to arrest the judgment against him and hold for naught the verdict of guilty rendered against him, for the following reasons, to-wit:

That said indictment does not, nor does any count or paragraph thereof state facts sufficient to constitute a public offense.

Defendant therefore prays that this motion be sustained and that the judgment against him be arrested and held for naught, and that he have all such other orders as may be just and proper in the premises.

And he will forever pray.

Cooper Collings Shreve

Attorneys for defendant

No 4253 Crim.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION

UNITED STATES OF AMERICA

Plaintiff

vs.

CLARENCE E. LEWIS

Defendant

MOTION IN ARREST OF
JUDGMENT

Filed

Feb 13 1923

Chas. N. Williams, Clerk
Edmund L. Smith, Deputy
Cooper, Collings & Shreve
Attorneys and Counselors
1011 Washington Bldg.

Los Angeles, Cal.

Phone 60277

UNITED STATES DISTRICT COURT, SOUTH-
ERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

THE UNITED STATES) No. 4253 Crim.
OF AMERICA,)

Plaintiff,) MOTION TO VA-

-vs-) CATE AND SET

CLARENCE E. LEWIS,) ASIDE VERDICT

Defendant.)

Comes now the defendant in the above entitled ac-
tion, and moves the court to vacate and set aside the

verdict heretofore rendered in this action, and grant him a new trial, upon the following grounds, to-wit:

I.

That the verdict is contrary to the law.

II.

That the verdict is contrary to the evidence.

III.

That the verdict is contrary to the law and the evidence.

IV.

Errors of law occurring during the trial of the case, and duly excepted to by the defendant.

V.

That the Court committed error by instructing the jury contrary to the law and the facts.

Said motion will be made upon the records and files in this action, and a bill of exceptions to be hereafter prepared.

Cooper Collings & Shreve

Attorneys for defendant.

Dated this 12th day of February, 1923.

No. 4253 Crim.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

-vs-

CLARENCE E. LEWIS

Defendant

MOTION TO VACATE AND SET
ASIDE VERDICT.

Filed

Feb 13 1923

Chas. N. Williams, Clerk
Edmund L. Smith, Deputy
Cooper, Collings & Shreve
Attorneys and Counselors
1011 Washington Bldg.
Los Angeles, Cal.
Phone 60277

At a stated term, to wit: The January Term, A. D. 1923 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES, on Tuesday the 13th day of February, in the year of Our Lord one thousand nine hundred and twenty-three, Present:

The Honorable BENJAMIN F. BLEDSOE District Judge.

UNITED STATES OF AMERICA,)	
	Plaintiff.	) No. 4253
vs.		) Crim.S. D.
Clarence E. Lewis,	Defendant)

This cause coming on at this time for sentence of defendant Clarence E. Lewis on the first count of the Indictment; Mack Meader, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendant being present in court with attorney A. S. Silvertown, Esq. appearing on behalf of W. L. Wil-

liams, Esq. counsel for the *defenda;t*; it now, on motion of said A. S. Silverton, Esq. it is by the court ordered that Attorney Cooper of Messrs. Cooper, Collings and Shreve be substituted for the defendant and said attorney Cooper having made a motion for a new trial and motion in arrest of judgment and said motions having been denied by the court, it is by the court ordered that defendant be granted ten days to file bill of exceptions; and thereupon the court pronounces sentence upon said defendant for the offence of which he stands convicted, namely, violation of the Harrison Narcotic Act of February 24th, 1919 amending the Act of December 17th, 1914, and it is the judgment of the court that defendant stand committed to the United States Penitentiary at McNeil Island for the term and period of four years on the first count and be remanded to the custody of the United States Marshal.

47/422

In the District Court of the United States

IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

Southern Division

UNITED STATES OF AMERICA,)

Plaintiff,) No. 4253

vs.

) Crim. S. D.

Clarence E. Lewis,

Defendant.)

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original JUDGMENT en-

tered in the above-entitled cause; and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said cause

ATTEST my hand the seal of said District Court,
this 21st day of Feb. A. D. 1923

CHAS. N. WILLIAMS

(Seal of Court)

Clerk

By B. B. Hansen

Deputy Clerk.

No. 4253 Crim.

In The District Court
for THE UNITED STATES
Southern District of California
SOUTHERN DIVISION

United States of America,

Plaintiff,

vs.

Clarence E. Lewis,

Defendant.

JUDGMENT ROLL.

Filed Feb. 21st, 1923

CHAS. N. WILLIAMS

Clerk

By B. B. Hansen

Deputy Clerk

Recorded Min. Book No. 47 page 422.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES)
Plaintiff and respondent,)
 -vs-)BILL OF EXCEPTIONS
CLARENCE E. LEWIS,)
Defendant and appellant.)

Bill of exceptions of the defendant Clarence E. Lewis, to be used on appeal from the judgment, and order denying defendant's motion for new trial and motion in arrest of judgment herein, and for all purposes for which a bill of exceptions may properly be used.

Be it remembered that the above entitled action was brought on regularly for trial, and was tried before the Honorable Benjamin F. Bledsoe, judge and a jury. The trial commenced on Wednesday, February 7, 1923, at 10:00 o'clock A. M. and continued after the noon recess and completed on the same day, and the jury having heard the arguments of counsel for both plaintiff and defendant, rendered their verdict therein on the 7th day of February, 1923. Mack Meader, Esq., Ass't U. S. Attorney, appeared on behalf of the Government, and W. L. Williams, Esq., appeared as counsel for defendant. The following are the proceedings which took place on and during the trial.

(Testimony of George Moffat.)

GEORGE MOFFAT, called as a witness on behalf of the Government, having been sworn, testified (tr. p. 1, et seq):

DIRECT EXAMINATION

BY MR MEADER:

My name is George Moffat and I am by occupation a chemist and druggist. At the request of Federal Narcotic Agent Wood, on yesterday (February 6) I made an examination of samples of drugs that were furnished me.

RULING AND EXCEPTION NO. 1

Q What samples were furnished you, if you recall?

MR WILLIAMS: That is objected to on the ground it is immaterial.

THE COURT: Overruled.

A I received one small bottle and I took a sample out of one square carton.

Q BY MR MEADER: Showing you this package I will ask you if you ever saw that before?

A Yes sir.

I saw it yesterday at one o'clock.

RULING AND EXCEPTION No. 2

Q Is that the package that was turned over to you by Mr. Wood?

A It is.

MR WILLIAMS: I object to that, if your Honor please, on the ground it is irrelevant and immaterial and no proper foundation laid.

(Testimony of W. R. Wood.)

THE COURT: I suppose you are going to connect it up. Overruled.

MR MEADER: Absolutely, your Honor.

Q That was turned over to you by Federal Narcotic Agent Wood?

A It was.

He requested me to make an examination of the contents, and as a result of that examination I found that the small bottle contained cocaine, and this sample (indicating sample taken from square carton) is morphine sulphate. (Bottle and sample offered and received in evidence and marked "United States Exhibits 1 and 2 for Identification.")

RULING AND EXCEPTION NO 3

MR WILLIAMS: No cross examination. I move at this time that all of the testimony of the witness be stricken out on the ground it is incompetent, irrelevant and immaterial, and no foundation laid.

THE COURT: Denied. Go on.

W. R. WOOD, called as a witness on behalf of the Government, having been sworn, testified (tr. p. 4, et seq):

DIRECT EXAMINATION

BY MR MEADER:

My name is W. R. Wood, and I am a Federal Narcotic Agent with the Bureau of Internal Revenue.

RULING AND EXCEPTION NO. 4.

Q On the 6th of February, yesterday, did you turn

(Testimony of W. R. Wood.)

over to Mr. George Moffat, Chemist, any samples of any drugs to be analyzed?

A Yes sir.

MR WILLIAMS: That is objected to on the ground it is immaterial and no proper foundation laid.

THE COURT: Overruled. What is the answer

A Yes sir.

United States Exhibits 1 and 2 for Identification are the drugs which I turned over to Mr. Moffat. They were taken from the evidence in the office of the U. S. Attorney, in the case of United States v. Lewis, which evidence was in my custody, having been removed by me from the vault of the postal inspectors. It was originally received from Lieutenant O'Brien, of the Los Angeles police force. The various cans and packages in the court room were also turned over to me by Lieutenant O'Brien, and are all part of the evidence in the case of United States v. Lewis.

RULING AND EXCEPTION NO. 5

MR MEADER: I now ask, if the Court please, at this time, that these cans and packages be received and marked for identification.

MR WILLIAMS: That is objected to on the ground it is immaterial and no proper foundation laid.

THE COURT: Overruled.

CROSS EXAMINATION

BY MR WILLIAMS:

RULING AND EXCEPTION NO. 6

MR WILLIAMS: I move at this time that all testimony of the witness with reference to these

(Testimony of W. R. Wood.)

various exhibits be stricken out on the ground it is incompetent, irrelevant and immaterial and no proper foundation laid.

THE COURT: Denied.

RULING AND EXCEPTION NO 7

BY MR WILLIAMS: Mr. Wood, when did you come to this District as Federal agent?

MR MEADER: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

A January 5, 1922.

I first saw Lieutenant O'Brien in connection with these exhibits the morning after the arrest, the exact date I am not sure of, and it was then he turned over to me the articles I have identified, which articles I placed in the vault of the postal inspectors, where we keep all our narcotic evidence. I made a memorandum on my Government report of the contents of the package, put a mark on the paper in which it was wrapped, tied and sealed it. There was no mark on the outside of the package to indicate what were the contents.

REDIRECT EXAMINATION

BY MR MEADER:

The package so placed in the vault, containing the evidence, has never since been out of my custody and control, until the present time. I took it from the vault yesterday morning, and found it in the same condition in which I left it.

(Testimony of T. F. O'Brien.)

RECROSS EXAMINATION

BY MR WILLIAMS:

Mr. C. W. Montgomery is the only person, save myself, who has access to the vault. We do not have keys, but it is opened for us each time by a postal inspector in charge of the office. (tr. 9).

T. F. O'BRIEN, called as a witness on behalf of the Government, testified, (tr. p. 10, et seq.):

DIRECT EXAMINATION

BY MR MEADER: My name is T. F. O'Brien, and I am a Police officer.

RULING AND EXCEPTION NO. 8

MR WILLIAMS: If the Court please, at this time I ask for an order excluding all witness from the courtroom who have not testified.

THE COURT: It will be denied.

I saw the defendant, Clarence Lewis, for the first time, about the 22d day of April, last year, at Eighth & Hemlock Streets, this City. Mr. Mailheu, Mr. Yarrow, and Mr. Boden, of the State Board of Pharmacy were with me at the time.

RULING AND EXCEPTION NO 8

Q On or about the 22d of April of last year did you, or anyone in your presence, or anyone by your direction, have any dealings with this defendant relative to the purchase or sale of narcotics?

A Indirectly, yes sir.

MR WILLIAMS: I ask that be stricken out as not responsive to the question.

THE COURT: Denied.

(Testimony of T. F. O'Brien.)

MR WILLIAMS: Will your Honor hear the question?

MR MEADER: What *di* you mean by "indirectly"?

MR WILLIAMS: That is objected to as immaterial and calling for the conclusion of the witness.

THE COURT: denied.

Q There was a man by the name of George Morris met the defendant at Eighth and Hemlock. They walked down Hemlock to an alley *whci* parallels Eighth Street, between Eighth and Ninth, and they turned east in that alley. It is a transverse alley going south and they turned in that alley and walked down and we followed. Two or three minutes after, possibly five minutes later, I saw the defendant and Morris in the back yard of 842 Hemlock. At that time Mr. Morris had some currency in his hand and the defendant had this box here, walking along carrying it.

I refer to the pasteboard box, Government's Exhibit 7 for Identification. There is a gate there, or fence, about five feet and a half high, and I walked in. As I stepped in they were possibly 12 to 20 feet away from me and the defendant looked up and took the box and tossed in on the porch of a rear house there. I walked over and picked it up and looked in it and then placed him under arrest. The money Mr. Morris had in his hand was his own, as I now recall. I had met Morris uptown, I don't remember where.

(Testimony of T. F. O'Brien.)

RULING AND EXCEPTION No. 9

Q Was anything said at that time when you met him uptown, in regard to the defendant Lewis?

A Yes sir.

MR WILLIAMS: That is objected to on the ground it is hearsay.

THE COURT: Denied.

RULING AND EXCEPTION NO. 10

Q BY MR MEADER: Were any arrangements made by you with Morris to go to the home of the defendant?

MR WILLIAMS: Just a moment. That is objected to on the same ground, unless it can be shown the defendant was present.

THE COURT: Overruled.

A To not go to his home but to meet at Eighth and Hemlock.

Mr. Morris volunteered his services as an informer, and arranged to meet me and the other officers at Eighth and Hemlock. We did not go down to meet the defendant with him, but went into a packing house on Eighth street right opposite the beginning of Hemlock, approximately 50 or 60 feet away. We saw him meet the defendant, and saw them walk down to the alley together.

RULING AND EXCEPTION NO. 11

Q And down this alley to this place at 842 Hemlock?

A It is a transverse alley.

MR WILLIAMS: That has already been asked

(Testimony of T. F. O'Brien.)

and answered, and I object to it on that ground.

THE COURT: Overruled.

We saw them turn into the first alley, and the next time we saw them they were in the back yard at 842 Hemlock Street. The package which defendant threw on the porch, and which I opened before I arrested him, contained two pasteboard boxes and a glass bottle. I do not see a mark on the bottle, U. S. Exhibit 2 for Identification, by which I can identify it as the same bottle that was in the package, but it was a similar bottle. United States Exhibit No. 4 for Identification is the carton that was in the package. I wrote the date on it the same day, and the names of Mailheau, Yarrow and myself, and that is my handwriting on the upper portion.

Q Calling your attention to Exhibit 7 for Identification, is there anything that is in that package now that was in there at that time? Just examine it.

A Yes, this other one that was there.

Q That was in there also?

A Yes sir. These other things were not.

Q These were not in there at that time?

A No sir.

Q But these two packages and a bottle similar to this were there?

A Yes sir.

RULING AND EXCEPTION NO 12

MR MEADER: I would ask at this time, if the Court please, to have United States Exhibit No. 4 for Identification, United States Exhibit No. 2 for Iden-

(Testimony of T. F. O'Brien.)
tification, and this other package which we will call Exhibit 8 for Identification, be received in evidence at this time as United States Exhibits 1, 2 and 3.

MR WILLIAMS: That is objected to on the ground that no proper foundation has been laid. It has not been shown whether the alleged exhibits were seized by due process of law or not.

THE COURT: Overruled.

After placing the defendant under arrest, Mr. Yar-row, Mr. Mailheau, Mr. Boden, the defendant and myself went upstairs at 842. I think the defendant's sister was also along. In a trunk upstairs we took out some more of those metal boxes, referring to the cans, Exhibits 3 and 4 for Identification. I made a mark on one of them. This is one that we found in the trunk.

RULING AND EXCEPTION NO. 13

MR MEADER: We ask to have that received as United States Exhibit No. 4

MR WILLIAMS: We object to that as incompetent, irrelevant and immaterial, no proper foundation laid, and no showing that it was seized by due process of law, or that it is competent testimony.

THE COURT: Overruled.

THE CLERK: That is United States Exhibit No. 3.

I remember a can like the other one, with the same contents, and in my opinion it is the same.

RULING AND EXCEPTION NO 14.

MR MEADER: I ask to have this received as

(Testimony of T. F. O'Brien.)

United States Exhibit No. 4.

MR WILLIAMS: Same objection.

THE COURT: Same ruling.

We brought the defendant down to the Station and booked him. When I saw the defendant throw the pasteboard box onto the porch I came through the gate alone, and Mr. Mailheu was in the adjoining yard. Mr. Yarrow was around in front, and Mr. Boden was with him. When I met Morris uptown he had no packages of any kind with him, nor did the defendant have any package, to my knowledge when he met morris. They were standing approximately four or five feet from the porch, possibly less, when defendant threw the pasteboard package on the porch. I do not know where defendant's sister was at the time I placed defendant under arrest, she was not in sight, but came up from the direction of the house, with some man, shortly after. I believe she said the man was her husband. The cans, boxes, bottles and things I seized I turned over to Federal Agent Wood, and he gave me a receipt for them.

CROSS EXAMINATION

BY MR WILLIAMS: N(tr. 21, et seq):

RULING AND EXCEPTION NO. 15

Q Mr. O'Brien, at the time that you sent George Morris down there you had pending against him in Judge Chambers' court two charges, did you not?

MR MEADER: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

(Testimony of T. F. O'Brien.)

MR WILLIAMS: If your Honor please, that goes to the motives of this testimony, in testifying.

THE COURT: Sustained.

MR WILLIAMS: I want to show, if your Honor please, that they had this complaint - -

THE COURT: Well it is sustained.

RULING AND EXCEPTION NO. 16

Q BY MR WILLIAMS: Well, you had arrested Morris before that, had you not?

MR MEADER: Objected to as incompetent, irrelevant and immaterial

THE COURT: Sustained. That hasn't anything to do with this case.

MR WILLIAMS: If your Honor please, wouldn't it have something to do with this case?

THE COURT: No, it hasn't anything to do with this case. The Court has ruled.

Mr. Morris volunteered to go, and we told him we would meet him there.

RULING AND EXCEPTION NO. 17

A And you knew, and had known for many years, that George Morris was a notorious addict?

MR MEADER: Just a minute. Objected to as incompetent, irrelevant and immaterial.

THE COURT: Sustained.

He told us that he could buy morphine, and we took the numbers of his bills. When we arrested the defendant Morris still had the money in his hand. I don't know whether I could see over the board fence at the back of 842 or not, I looked through the cracks.

(Testimony of T. F. O'Brien.)

I could hear them talking, and looking through saw them. They were walking toward the gate. There is a little cottage right near the gate, on the rear of 842, but they were in line so I could see them. I did not see any transaction, saw no money change hands. That was from three to five minutes after we had seen Morris. Probably fifteen or twenty minutes elapsed from the time we met Morris down town and the time we met him out there. He went out on the street car, and we in the automobile. I never saw the package in Morris' possession.

DIRECT EXAMINATION

BY MR MEADER: (tr. 26, et seq.):

There was no arrangement made with Morris as to the time when we were to show on the scene. When I opened the gate and saw Morris and the defendant coming toward me there was no one else in the back yard that I could see. The crack in the fence through which I looked was about three eights or a quarter of an inch wide, and I could see the entire persons of both Morris and the defendant. I noticed the box in the defendant's hand, but didn't see the money in Morris's hand until after I had stepped into the yard. I had stepped into the yard and was possibly ten feet from the defendant when he threw the box onto the porch. We had some conversation at that time, but it was so long ago that I don't recall just what was said. About the time I placed the defendant under arrest, after looking into the package, Mr. Mailheu climbed over the fence. It was after

(Testimony of T. J. Mailheau.)

I had picked up the box and turned around that I first noticed the money in Morris's hand. I believe I took it from him and looked at it. It was currency, but I don't remember just how much. (tr. 29).

T. J. MAILHEAU, Called as a witness on behalf of the Government, testified (tr. p. 30, et seq.):

DIRECT EXAMINATION

BY MR MEADER:

My name is T. J. Mailheau, and I am and was about the 22nd of Last April, a Detective Sergeant of the Police Department. I first saw Clarence Lewis, the defendant, on the 22d of last April, at Eighth and Hemlock Streets. I was with Detective O'Brien, Detective Yarrow and Mr. Boden, and I saw the defendant meet George Morris on the southwest corner of Eighth and Hemlock. The two stood there for about a minute and talked, then walked south on Hemlock Street until they came to an alley, crossed over on the east side of Hemlock Street, and went down that alley east off of Hemlock. I next saw the defendant when he was going down the alley south and running parallel with Hemlock Street; and again I saw him as he turned in a gate in the rear of a building on Hemlock Street, which I afterward found was 842. I was probably 300 feet away as he turned in, at the corner of the alley that runs east from Hemlock Street and the one that runs parallel. There is a jog in the alley. I waited until he turned, then walked south on the alley, with Lieutenant O'Brien who was

(Testimony of T. J. Mailheau.)

behind me. I went in at the rear of the first place north of 842 Hemlock Street, and went in the back yard. I went up to the fence between the two places, a board fence about six feet tall, and looked between the boards and saw Morris standing there. He was later joined by Mr. Lewis, in about a minute and a half, and Mr. Lewis had a package with him. They walked east in the yard, and the next thing I knew I saw Mr. Lewis throw the package he was carrying, and it landed on the porch of a building in the rear of 842 Hemlock Street. I do not know where Lieutenant O'Brien was at that time. The next I saw of him was when he threw the package over the fence, and as I climbed over the fence I noticed that O'Brien had the defendant by his sleeve and was pulling him toward the porch where the package lay. As soon as I got over the fence I grabbed the other man, Mr. Morris, who had a number of bills in his hand. Mr. O'Brien picked up the package and glanced in it, and I too examined it after I joined O'Brien with Morris. The package was identically like Plaintiff's Exhibit 7. United States Exhibit No. 4, also Exhibit 1 were inside it, and a bottle identically like Exhibit 2. I cannot say at this (continued next page)

time whether it is the same bottle or not. I thought I had my initials on it, but I don't seem to find them.

RULING AND EXCEPTION NO. 18.

MR. WILLIAMS: I move to strike out all of the testimony of this witness with reference to that bottle.

(Testimony of T. J. Mailheau.)

THE COURT: The motion is denied.

MR. WILLIAMS: Exception.

Q. BY THE COURT: You said it was just the same as this bottle, did you?

A Practically just the same. There was two paste-board boxes and then a bottle identically like that.

I opened the box to see what was in it.

RULING AND EXCEPTION NO. 19.

Q What was in it,

A In my judgment I would say it was filled with cocaine.

Q Have you had any experience with morphine or cocaine?

A I have, for four years.

MR WILLIAMS: I move to strike out that it was filled with cocaine, on the ground that no proper foundation has been laid.

THE COURT: The motion is denied.

After the defendant had been placed under arrest and the box recovered from the porch where it was thrown, Mr. Boden and Mr. Yarrow joined us and asked the defendant where he lived. He said in that house and Boden suggested that we go up to his room and search it. Just about that time the defendant looked at Morris and said "You damned stool pigeon", and then Mr. Boden suggested that we take the fellow Morris and put him in one of the two machines we had. We went upstairs, and on the second floor, in a north front room, which defendant said was his room, we found some marajuna in different cans, some

(Testimony of T. J. Mailheau.)

marajuana cigarettes that had been partly smoked; a box containing a powder Substance which I would say was powdered opium; part of an opium pipe—that is, a kind of common pipe with a little rubber hose attachment, and on the top a kind of brass bed, with a hole in it; then we found in a trunk about thirty-five pint bottles of whiskey, and two or three revolvers, a shot-gun and rifle, if I remember correctly.

RULING AND EXCEPTION NO. 20

MR WILLIAMS: I move that all testimony of the witness with reference to this conclusion as to any narcotics be stricken out on the ground that no foundation has been laid.

THE COURT: Denied.

MR WILLIAMS: Exception.

RULING AND EXCEPTION NO. 21

Q BY MR MEADER: Did you find in this trunk any drugs or narcotics of any kind?

MR WILLIAMS: That is objected to as leading and suggestive.

THE COURT: The objection is overruled.

A We did. We found some marajuana in that trunk, and some powdered opium in the pipe.

This is the pipe (referring to Exhibit) only with a piece of rubber hose with a kind of mouthpiece on it, which was lying right alongside of it. I would say this is the same one, or identically like it.

RULING AND EXCEPTION NO. 22

MR MEADER: I will ask that this be received in evidence.

(Testimony of T. J. Mailheau.)

MR WILLIAMS: It is objected to on the ground that no proper foundation has been laid and that it has not been properly identified.

THE COURT: In what respect has no foundation been laid?

MR WILLIAMS: He says it was one like it, but I don't know whether it was the same one or not.

THE COURT: The objection is overruled.

MR WILLIAMS: Exception.

The defendant was present in the room at all times during the search and his sister, and another gentleman was there part of the time.

RULING AND EXCEPTION NO. 23

Q Now, referring back to the time you were standing at the fence in the alley, looking through the fence between the lots, I want to ask you if you are positive that you saw this defendant *through* that package over onto the porch.

MR WILLIAMS: That is objected to as already asked and answered.

THE COURT: The objection is overruled.

A I did; yes sir.

CROSS EXAMINATION

BY MR WILLIAMS: (tr. p. 38, et seq):

I was the first one to go down the alley, and I went into the back of 836, looking for a basement, but not seeing one there I went towards the fence, hearing some conversation in the next yard. I am not sure as to the number 836, but it was the first place north of 842. I do not recollect having had any con-

(Testimony of T. J. Mailheau.)

versation with the lady of that house. I probably was in that yard about a minute before I climbed the fence. Mr. Boden was not with me until after the defendants were placed under arrest. Boden and Yarrow had started down Hemlock and O'Brien and myself started east on the alley off of Hemlock. I do not remember anyone being with me in the alley at 836, there might have been some one else there, but I do not remember it now. The fence was about six foot high, but there were a number of places where one could look through it, and I looked through a crack, and afterward climbed the fence. I stood close to the fence.

George Morris was not in defendant's room during the search, he was taken and put in the machine immediately after the arrest. When defendant called Morris a stool pigeon, Morris requested that we get him away from there, and said "I didn't have a chance to give him the money."

RULING AND EXCEPTION NO. 24

Q Was anything said in that conversation by Morris there to the effect that you officers had some cases hanging over him in the police court?

MR MEADER: That is objected to as incompetent, irrelevant, and immaterial.

THE COURT: The objection is overruled, if it was any part of that conversation.

(Last question read).

A No sir.

I was in the room at all times when we were up-

(Testimony of Lloyd R. Yarrow.)

stairs until I took the trunk and the other articles out, shortly before the defendant was taken out, if I remember (tr. 43)

LLOYD R. YARROW, called as a witness on behalf of the Government, testified (tr. 44, et seq):

DIRECT EXAMINATION

BY MR MEADER:

My name is Lloyd R. Yarrow, and I am and was on April 22, last, a police officer. I saw the defendant Clarence Lewis on that date, at Eighth and Hemlock Streets, and at 842 Hemlock Street. I went upstairs in the house at the time the search was made, after the arrest, together with Officers O'Brien, Mailheu, and Inspector Boden of the State Board of Pharmacy and the defendant, and participated in the search. These exhibits I saw in defendant's room at 842 Hemlock Street. The pipe with the brass attachment, United States Exhibit No. 10, was there at that time. I first saw it in the possession of one of the officer's, but do not know just which one found it.

I first saw the package which was found in the back yard at 842 Hemlock Street, in the possession of Mr. O'Brien.

RULING AND EXCEPTION NO. 25

Q Did you see what the contents were at all?

A Yes sir.

Q What were they, to the best of your recollection?

(Testimony of Lloyd R. Yarrow)

A Morphine and cocaine.

Q Just loose?

A No, they were in *spearate* packages. There was two ounces of morphine and a bottle of cocaine.

MR WILLIAMS: I move to strike that out as calling for a conclusion and opinion on the part of the witness, and no proper foundation laid.

THE COURT: The motion is denied, No objection was made.

Q BY MR MEADER: What experience have you had with morphine or cocaine do you know it when you see it?

A Yes sir, I have had about four years experience with it.

THE COURT: That ought to be enough.

Exhibits No. 4 and 8 were in that package at the time I first saw the contents of it, and a bottle similar to Exhibit 2, but I couldn't state positively that it is the same. I didn't examine it at all. The first time I saw Lewis on the premises on Hemlock Street, he was in the rear of the house at 842, after he had been placed under arrest.

RULING AND EXCEPTION NO. 26

Q At that time did you hear any statements made by the defendant regarding this morphine or cocaine or these narcotics?

MR WILLIAMS: That is objected to on the ground that no foundation has been laid.

THE COURT: In what respect?

(Testimony of Lloyd R. Yarrow.)

MR WILLIAMS: There is no foundation as to time, place, or persons present.

THE COURT: He is asking him if he heard any statements made in the back yard at that time and place on that afternoon.

MR WILLIAMS: Whether he had been informed of the nature of the charge against him or whether --

MR MEADER: I didn't ask him what he said, your Honor.

(Last question read).

THE COURT: The objection is overruled.

A There was some statements made at the time that I --

MR WILLIAMS: Just a moment, I submit the witness should answer yes or no.

THE COURT: He did: He said there were some statements made. Go on.

A (continuing) But I wouldn't say as to what they were. I don't remember. It has been so long ago.

There was statements made by defendant relative to the transaction after his room had been searched, but I don't remember what they were. I put no marks on any of the articles shown me by counsel.

RULING AND EXCEPTION NO. 27

MR WILLIAMS That is all.

MR MEADER: That is the Government's case.

MR WILLIAMS: I now move to dismiss as to Count 2 on the ground that there is no proof before

(Testimony of Clarence E. Lewis.)

the Court and jury to show that there was no barter, sale, exchange, or giving away as charged in Count 2.

THE COURT: The motion is denied.

MR WILLIAMS: Exception.

CLARENCE E. LEWIS, defendant herein, having been duly sworn as a witness in his own behalf, testified (tr. 50, et seq)

DIRECT EXAMINATION

BY MR WILLIAMS:

My name is Clarence E. Lewis, and I conduct a pool hall, cigar stand and shoe shining stand at 1308 East Ninth Street. I was engaged in that business on the 22nd day of April, and have been for about two years. I came out of the Army just prior to engaging in the business, in April, 1919, receiving an honorable discharge. I was living, on the 22nd of April, at 842 Hemlock Street, and there were residing there beside myself two sisters, a couple of roomers and a brother. About noon on the 22nd I was going to the bank at Eighth and Central to get a check cashed. When I got to Eighth and Central I reached in my pocket to see if I had the check and discovered I had forgotten it, so I turned back toward the house to get it, and at Eighth and Hemlock I met Morris. I went with him down Hemlock Street to the alley and east in that alley to the next one that comes right in back in the rear of the house, and on down the alley south. I did not sell any narcotics to Mr. Morris on that occasion, and I did not

(Testimony of Clarence E. Lewis.)

sell him the narcotics set forth in Count 1 of the indictment in this case. There was no particular conversation between Morris and I about narcotics at that time. He was asking me about some people who lived in the rear of the house at 842½ Hemlock Street, back of the house I lived in, and I told him I was going back there. He said he would go with me. I left him standing in the back yard and went to the porch and called my sister and asked her if the woman still lived there. She said she was *woking* at the time, and I came outside and was starting across the yard with Morris when Officer O'Brien ran into the yard. The package that was found in the yard was not mine, and I had never seen it before. I didn't have it in my hands, it was on the porch. Morris did not give me any money in connection with the package. As we were walking toward the gate the officer ran in the yard and grabbed me and asked me why I threw that package on the porch. I told him I hadn't thrown it, and that it must belong to him. When Boden came in he said to Morris, "Well, you are up to it again?" and he answered, "Well, you know I use this stuff, and I am out on \$2000 bail, "or something like that. I don't remember just what he did say. I was arrested and they took me upstairs. I showed them where I stayed and they went through an old trunk what I had, full of junk, practically. It had been down in the basement all the time I was in the Army, and was never unpacked. I don't know whether they took anything out of it or not. (tr. 54).

(Testimony of Clarence E. Lewis.)

I frequently, go through the gate in the rear of 842; it pulls out, north. There are no cracks in it. I was just in the back yard long enough to go in and ask if Mrs. Campbell was still back there, and come right out again. I just called from the inside of the porch. (tr. 55)

CROSS EXAMINATION

BY MR MEADER:

I have lived at 842 Hemlock possibly eighteen years or more. I don't remember if the fence was there when I went to war, but it was there when I came back, has been there about three years, anyway. It is made of box wood, and fits right together. That is, the gate has no cracks in it. I think there are some cracks in the fence. After I told Morris that the woman would probably be there later in the day he pretended he did know the way out, and I started over toward the gate and told him. I was in front of the little house, possibly twenty or more feet from the gate at that time.

RULING AND EXCEPTION NO. 28

Q You didn't Tell him, "Why, there is the gate over there", did you?

MR. WILLIAMS: That is objected to as *argumentive*.

THE COURT: The objection is overruled.

A You couldn't see the gate from where we stood at. You had to come to the side.

I first saw the package in evidence when the officer picked it up from the floor of the porch, of the rear

(Testimony of Clarence E. Lewis.)

house. It is an open porch, and there is a *log* of junk on it. This happened about 11:30 or 12, I believe. The package, when I first saw it, was wrapped in newspaper, and lying right there on the porch so that it could be seen. It was not on the porch of the house where I live, but on the porch of the house Mrs. Campbell lived in. I didn't throw it there. (tr. 58)

I know nothing about the pipe in evidence. There was lots of junk in that trunk, and it had been in the basement ever since I had been in the Army. I don't know what was in it. I never had any marijuana around there, or any marijuana cigarettes. I saw the officers take these cans and things out of the trunk. I had no clothes in the *runk* except a soldier's uniform. I just tossed the uniform in on top of a lot of junk. They didn't show me anything they took out of the trunk; they just took the trunk away from me.

I didn't say anything to Morris about being a stool pigeon (tr. 59). I said to my sister, "This fellow has framed up on me; he must be some kind of a stool pigeon or something"; That was after she came down (top of page 60).

I had seen Morris from time to time, before that, coming in my place, my pool room. I believe Morris did have some money in his hand after the officers came in, at least he had something in his hand. I wasn't paying any special attention to him. The officers did not tell me what I was under arrest for. They just said "What did you throw that package down

(Testimony of Clarence E. Lewis.)

there for?" I told them it was not mine, that it must belong to his man. Morris didn't have a package when I met him, nor at any other time that I saw him that day. I believe I did ask Mr. O'Brien what I was under arrest for, and he said "You are under arrest for having that dope there". I don't believe he said anything about me being under arrest for selling narcotics. My sister was in the house at the time, but came out shortly afterward. I don't remember whether she asked the officers what I was arrested for or not, or whether they told her.

Hemlock Street is east of Central Avenue, and runs south from Eighth. My place of business is at 1308 East Ninth Street. I frequently go in the back way, or get to my house, 842 Hemlock, and went in that way that day because Morris asked me about the people in the rear house and it was closer that way. I intended to knock on the door and call the people. I stopped at the little house on the way in, and then went inside the porch and called to my sister. (tr. 63) No one answered in the little house, and I don't think anyone was there. The house I live in is a two-story house, a little house sets right on the alley, and there is a space between the back of my house and the front of the little cottage, of possibly twenty or twenty-five feet. The cottage occupies nearly all of the rear lot, except a space about eight or ten feet, which is covered by the gate (tr. 64)

(Testimony of Annie Earley—Blanche Jones.)

ANNIE EARLEY, called as a witness for the defendant, testified, (tr. 65, et seq):

DIRECT EXAMINATION

BY MR WILLIAMS:

My name is Annie Earley, and the defendant Clarence Lewis is my brother. I live with him at 842 Hemlock. On the 22nd of April, the day of his arrest, and shortly before his arrest, he came to the back stairs and called and asked me if Mrs. Campbell still lived in the rear. I said yes, "but you had better go and knock on the door and see," because Mrs. Campbell sometimes goes out in service. I could see him when he asked me, but I paid little attention because I was housecleaning. I didn't see any package in his hand. After talking with me he just went down the back steps. I live upstairs. (tr. 66).

CROSS EXAMINATION

BY MR MEADER:

I was in the kitchen when he spoke to me, and I came out on the porch. He stood half way up the kitchen steps and talked to me. He could not see me from where he stood, but I could see him.

BLANCHE JONES, called as a witness on behalf of the defendant, testified (tr. 67, et seq):

DIRECT EXAMINATION

BY MR WILLIAMS:

My name is Blanche Jones, and I live at 836 Hemlock, next door to 842. I was living there on the 22nd of April, and recall the time the defendant was ar-

(Testimony of William McKinley Dixon.)

rested. Just before his arrest I observed two officers in my back yard. They came around the front, on the side farthest from 842. The entrance to my house is on the north side, and the entrance to 842 is on the north side. I saw them going around.

CROSS EXAMINATION

BY MR MEADER:

I was in the dining-room when I saw them. They were dressed as they are today. I saw them walk past my dining-room window, and on in back. They didn't stay long, but came right after. One was a heavy set man. (tr. 69)

WILLIAM MCKINLEY DIXON, a witness for the defendant, testified (tr. 70):

DIRECT EXAMINATION

BY MR WILLIAMS:

My name is William McKinley Dixon, and I am a vocation trainer. I have known the defendant about two years.

RULING AND EXCEPTION NO. 29

Q Do you know his general reputation in the community in which he resides for truth, honesty, and integrity?

THE COURT: Wait a minute. That is not involved -- truth, honest and integrity. That is not the issue in this case. The question is, is he a law-abiding citizen?

Q BY MR WILLIAMS: Do you know his general reputation as to whether he is a law-abiding citizen in the community in which he resides?

(Testimony of George W. Dickerson—John A. Irvin.)

A Since I - -

THE COURT: Do you know his general reputation?

A As far as I know, yes.

As far as I know his general reputation is good.

GEORGE W. DICKERSON, called as a witness on behalf of the defendant, testified (tr. 72)

DIRECT EXAMINATION

BY MR WILLIAMS:

My name is George W. Dickerson, and I have known the defendant for the last ten or twelve years. To my knowledge he has been a law-abiding citizen since I knew him.

JOHN A. IRVIN, called as a witness for the defendant, testified: (tr. 73)

My name is John A. Irvin. I have known the defendant since 1913. His reputation is good as far as I know. I have never known him to have any police reputation. His general reputation is good.

- - - - -

Thereupon the Court instructed the Jury as follows:

ORAL INSTRUCTIONS

THE COURT: Gentlemen of the jury, I will ask you to listen carefully to the instructions of the court which will guide you in your deliberations.

The defendant here is charged with two asserted violations of the law growing out of the same transaction and alleged to be in violation of the Harrison anti-narcotic law. The counts relate to the same

transaction and are stated differently merely because of the different provisions of the law which it is alleged are violated by the same transaction. They had to do with the same transaction, of course. It being alleged in the first one that, as you will remember, the defendant, on or about the 22d day of April, did knowingly, wilfully, unlawfully, and feloniously deal in and distribute certain narcotics, to wit, one ounce of cocaine and two packages containing about one ounce each of morphine sulphate, without having registered and paid the special tax as required by the Harrison anti-narcotic law, the defendant being then and there a person required to register and pay the special tax under and by virtue of said act.

The second count charges that the defendant did knowingly, wilfully, unlawfully, and feloniously sell, barter, exchange and give away a certain derivative of coca leaves and a certain derivative of opium, to wit, one ounce cocaine and two packages containing about one ounce each of morphine sulphate, not in pursuance of a written order in blank provided for that purpose by the Commissioner of Internal Revenue; and that the said defendant was then and there a person required to register and pay the special tax.

To that the defendant interposed a plea of not guilty, and the question for you to determine is whether or not he did conduct himself as alleged.

Now, this indictment is a mere charge or accusation against the defendant, of course, required under our law, that the defendant may be brought before the bar of the court for trial. It of itself is not any

evidence against the defendant, and you are not to consider it as evidence. Neither are you to permit yourselves, of course, for any reason, or on any account, to be prejudiced against the defendant because an indictment has been brought against him. The question for you to consider is what do the proofs here show. It is the duty of the jury to determine whether or not the defendant be guilty or not guilty of the offense charged, considering all of the evidence in the case.

It is not for you to consider the penalty prescribed for the punishment of the offense charged, and if you are aware of the penalty prescribed by law it is your duty to disregard that knowledge. In other words, your duty is to say whether or not the defendant is guilty of the thing he is charged with under the evidence, and then after that very high and responsible duty shall have been performed by you, and if you find the defendant guilty, it will be the duty of the court to say what judgment shall be imposed upon him in order that the requirements of the law and demands of good society and security here in our midst be met. It will be for the Court to decide what punishment shall be imposed, and if you should find the defendant guilty I think you may rely upon the good judgment and discretion of the Court being exercised in that behalf. In other words, you need not concern yourselves at all about the punishment to be pronounced; you concern yourselves with the thing that devolves upon you, to say whether or not he has done the thing charged.

In this connection, gentlemen, you are instructed that juries are impaneled for the purpose of agreeing upon a verdict if they can conscientiously do so. It is true that each juror must decide the matter for himself, yet he should do so only after a consideration of the case with his fellow jurors and he should not hesitate to sacrifice his view or opinions of the case when convinced that they are erroneous, even though in so doing he defer to the views or opinions of others.

You are also instructed that you are the exclusive judges of the credibility of the witnesses whose testimony has been admitted in evidence herein and of the effect and value of such evidence. It is for you to say what the truth is here in this controversy—where the truth lies. Your power in this regard, however, is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of law which will be given you by the Court.

In the Federal Court, as you well know, it is the function and privilege of the Court, if it feels the necessities of the case justify or seem to require it, to express to you its own opinion respecting the merits of the case or respecting the evidence adduced; and during the course of these instructions I may take occasion to express to you some opinion of my own respecting the merits of the controversy, but if I do you are to remember at all times and keep in mind the fact that no expression of opinion coming from the Court with respect to the facts of the case is binding or conclusive upon you. You are brought here

by the law and by the Government in order that your own independent judgment may find reflection in the verdicts rendered, and that is what we want, your independent judgment; so you are not bound, as to matters of fact, by any expression of opinion that may come to you from the Court.

In arriving at a determination as to the credibility of witnesses you will remember that every witness is presumed to speak the truth, but this presumption of truthfulness on the part of every witness may be repelled by the manner in which he testifies; that is, is his manner straightforward or halting; is it expressive of candor and frankness, or is it suggestive of chicane and concealment? The presumption may be repelled by his appearance upon the stand, by the character of testimony given, if it be unreasonable or improbable in its nature, or by the giving of false or perjured testimony by him, if such has been given, or by his motives in the case as they may have been developed, if any, by his interest in the case or its outcome on one side or the other, by any bias he may have exhibited, or by contradictory evidence.

A witness may be impeached by the party against whom he was called by contradictory evidence, or by evidence that he has made at other times, statements inconsistent with his present testimony; and if you believe that any witness has been impeached, or that the presumption of truthfulness attaching to the testimony of such witness has been repelled, then you will give the testimony of such witness such credibility, if any, as you may think it entitled to.

Now in this case the defendant himself has taken the stand and offered evidence, and that is his right, and in the main you are to judge the credibility to be accorded to him, if any, by the same standard and the same rules that you apply to other witnesses, with this one exception, that in addition to the matter of noticing his demeanor and the character of his testimony and whether or not it is contradicted, and so forth, as I have called your attention to with respect to other witnesses, you are to weigh his testimony in the light of the fact that he is the defendant in the case and is interested in the outcome of the case in that particular behalf.

You are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds as against a less number or as against a presumption or other evidence satisfactory to you.

In civil cases the affirmative of the issue must be proved, and when the evidence is contradictory a decision must be in accordance with the preponderance of the evidence, that is, in accordance with the greater weight or worth of the evidence; but in criminal cases, of which this, of course, is one, guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require the defendant to prove himself innocent, but the law requires the Government to prove the defendant guilty in the manner and form as charged in the indictment beyond a reasonable

doubt, and unless the Government has done this it is the duty of the jury to acquit.

There are two classes of evidence, gentlemen, recognized and admitted in courts of justice upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive testimony of an eyewitness to the commission of the crime, one who saw the thing done which was actually a violation of the law; the other is testimony in proof of a chain of circumstances pointing sufficiently strong to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such evidence may consist of admissions by the defendant, plans laid for the commission of the crime,—in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. Where the evidence is entirely circumstantial, yet is not only consistent with the guilt of the defendant but inconsistent with any other reasonable conclusion, the law then makes it the duty of the jury to convict.

The defendant, gentlemen, has offered evidence here of possession by him of a good reputation in the community with respect to the trait involved, to-wit, his disposition to be a law-abiding citizen, the evidence of good character, or good reputation, when proven, or when good reputation is proven, it becomes a fact in the case and is a circumstance tending in a greater or less degree to establish his innocence. It must be considered in connection with all the other facts and circumstances of the case, and it may be sufficient in

itself to raise a reasonable doubt of the defendant's guilt; but if, after a full consideration of all the evidence adduced, the jury believe the defendant to be guilty of the crime charged they should so find, notwithstanding the proof of good character or good reputation.

The law presumes a defendant charged with crime to be innocent until he shall have been proved guilty beyond a reasonable doubt, and this presumption of innocence remains with the defendant and will of itself avail to acquit him unless it be overcome by proof of his guilt beyond a reasonable doubt, and if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence you should do so and in that case find him not guilty.

You are further charged that a reasonable doubt, with respect to which I have been speaking, is a doubt based on reason and which is reasonable in view of all of the evidence; and if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, then you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, then you have no reasonable doubt and you should convict him.

By such reasonable doubt you are not to understand that all doubt is to be excluded. It is impossible in the determination of these questions to be absolutely certain. You yourselves were not down there in that alley off Hemlock Street last April or May, or whenever it was, and you yourselves cannot know with certainty just exactly what did take place. You are required to decide the questions submitted to you from the evidence and upon the strong probabilities of the case, and to justify a conviction the probabilities must be so strong as, not to exclude all doubt or possibility of error, but as to exclude reasonable doubt. As long as you have a reasonable doubt of the defendant's guilt you may not convict him. When, weighing all the evidence, you have an abiding conviction and belief that the defendant is guilty it is your duty to convict; and no sympathy for him or for his family or for his plight or anything of the sort justifies you in seeking for doubts by any strained or unreasonable construction or interpretation of the law or evidence or facts.

Now, the statute, gentlemen, under which the defendant is prosecuted, being a law passed by the United States Congress, is of some considerable length, but I will call your attention only to those portions of it that seem to be most relevant and material. Its purpose, as I indicated to you at your impanelment this morning, is to throw such limitations and safeguards and impediments, if you please, around the traffic in drugs as to make it less desirable for one to engage in that and to punish those

who do engage in it without they conform to the requirements of the statute; and, really, the purpose of it was to bring about, if possible, some substantial abatement of the traffic in drugs. In line with that it is provided that -

“On and after July 1 of each year every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, or gives away opium or coca leaves or any compound, manufacture, salt derivative or preparation thereof shall register with the Collector of Internal Revenue of the District his name or style, place of business, and the place or places where such business is to be carried on and pay the special taxes hereinafter provided.”

A provision that those who engage in the business of dealing in drugs shall register with the Collector and pay a tax for the privilege of doing it.

Then it is further provided that -

“It shall be unlawful for any person required to register under the provisions of this Act to import, manufacture, produce, compound, sell, deal in, dispense, distribute, administer or give away any of the aforesaid drugs without having registered and paid the special taxes as imposed in this section.”

Now there is no evidence here that the defendant did register; no evidence that he paid a tax; and therefore it is fair to assume that he did not register and did not pay the tax, so that if he did deal in these drugs not having registered and not having paid the tax he is guilty of violation of the law—if you find that to be the fact.

Then it provides for the assessment and levy and collection of a special tax, which I will not call your attention to, it being unnecessary at this time.

And it is further provided:

“It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs except in the original stamped package or from the original stamped package; and the absence of appropriate tax paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this section by the person in whose possession the same may be found.”

Then there is another provision that -

“It shall be unlawful for any person not registered under the provisions of this act and who has not paid the special tax provided for by this act to have in his possession or under his control any of the aforesaid drugs and such possession or control shall be presumptive evidence of a violation of this section and also of a violation of the provisions of Section 1.”

That section I have just called your attention to. So that the possession of such drugs is presumptive evidence that the person is engaged in the business of dealing in or distributing such drugs, and any person who violates or fails to comply with any of the requirements of this act shall, upon conviction, be punished as required by law.

Now, while possession is, under the statute, presumptive evidence of the fact that he is dealing in and distributing drugs, of course that is a mere presumption, and the question for you to determine is to be

determined from all the evidence in the case, taking all of the presumptions -- the presumption of innocence and the other presumptions -- and from all of that it is for you to say whether, under the evidence, it has been proved beyond a reasonable doubt that he was, on the date mentioned, engaged in the doing of the things with which he stands charged.

Now, in the first count -- recalling that to your attention, gentlemen -- the defendant is charged with dealing in and distributing certain narcotics, and if, with respect to the first count, you should find and believe beyond a reasonable doubt that the defendant was dealing in or was distributing narcotics you should find him guilty. To deal in narcotics does not necessarily imply that there must have been a sale of narcotics and money received. A man deals in a thing if he has it and offers *offers* it for sale and is ready for the sale. Now it is obvious here in this case under the evidence that there was no sale consummated, so that the second count of the indictment, which charges the selling or bartering or exchanging or giving away -- it is difficult to say, under the evidence, whether or not the defendant was giving away any of these drugs or narcotics, but seemingly, although they both relate to the same transaction, the evidence is hardly strong enough to support a conviction on the second count, because of the fact that no sale was consummated, and it is difficult to say whether or not he was trying to give it away. It would hardly be supposed that he was. So I do not think you need to pay very much attention to the second count because of the

condition of the evidence. But the evidence is to the point that he was dealing in narcotics, and it is for you to say now what the worth and effect and weight of that evidence is.

Now you have heard the evidence of these officers who went down there and *two* witnessed, as they say, the transaction, and you have the discoveries that they made. If it is a fact that this defendant went there to his house and got these drugs and was just about to make a sale of them to this man Morris, if that was the fact, then he was dealing in these drugs and ought to be convicted, if you believe that beyond a reasonable doubt, whether a sale was made or not. You do not have to make a sale in order to be a dealer in these drugs. If you have a reasonable doubt as to whether or not that is the case, then of course you should acquit him. A man in the usual order of things would not be having in his possession that amount, and under those circumstances, as detailed by the officers, if you believe their testimony, without being a dealer, or without being engaged in a transaction that was looking to the consummation of a sale. So, really, the whole question is whom do you believe. If you believe the defendant, that he did not have the package in his hand; that it was not his; that he did not throw it on the porch; that he did not know anything about it; or if you have a reasonable doubt as to whether or not that is the case, then you should acquit him, because if that be true, or you have a reasonable doubt as to whether that is true, then he could not, under the evidence, be found guilty

of being a dealer in these narcotics. On the other hand, if you believe the testimony of the officers that he did have this in his hand, and when the officers came he did throw it on to the porch, that would lead irresistibly to the conclusion in the mind of any reasonable man that it was his, and, in connection with the fact that the money was in the other man's hand that a sale was about to be consummated, and that therefore he was a dealer. So it is just a question, as I have said, -- and that is the only question in the case -- whom do you believe? These officers have testified that they saw certain things that took place through the cracks in the fence there, certain things that are inconsistent with innocence on the part of the defendant, and that is met by the denial of the defendant. The defendant's interest in the case you must take into account in determining the degree of credibility on his part, the officers, if they are not telling the truth, are perjuring themselves in this case. They have testified positively that they looked through the fence and saw this man with these drugs in his hand, and one of them testified that he threw it away on the porch. Now, these officers are either here telling the truth or they have perjured themselves, one of the two, and you must ask yourselves the question what is there in the transaction, what is there in the nature of the evidence offered, what is there before the Court to justify you in believing that these officers have deliberately committed perjury? Because that is the answer to it. Either they have committed perjury

or else this man is guilty; and it is for you to say where the truth is; it is for you to say whom you will believe and where the reason and the probability of of the thing lies. If you believe beyond a reasonable doubt that the defendant was in the possession of this and was dealing in it, or was about to make a sale, you ought to find him guilty. If you have a reasonable doubt of it of course with the same promptitude you should find him not guilty.

Are there any exceptions to the charge?

ME. MEADER: No exceptions.

(No exceptions on behalf of defendant).

* * * *

The foregoing Bill of Exceptions is hereby allowed & settled and ordered of record herein

Bledsoe

5/12/23

Judge

[Endorsed]: No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent -vs- CLARENCE E. LEWIS, Defendant and appellant (Engrossed) BILL OF EXCEPTIONS Recd copy of within this 23rd day of Feb 1923 Mark L Herron Asst. U. S. Atty Lodged Feb 23 1923 at —min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire, Deputy COOPER, COLLINGS & SHREVE Attorneys and Counselors 1011 Washington Bldg. Los Angeles, Cal. Phone 60277

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

UNITED STATES	)	Crim. No. 4253
)	
Plaintiff and respondent,)	
)	
-vs-	)	PETITION FOR
	)	APPEAL
CLARENCE E. LEWIS,)	
)	
Defendant and appellant.)	

Comes now the defendant Clarence E. Lewis, petitioner above named, and appellant herein, and says:

That on the 12th day of February, 1923, the above court made and entered its order denying appellant's motion for new trial and motion in arrest of judgment, in which orders, and on the trial of said action, certain errors were made to the prejudice of appellant herein, all of which will more fully appear in the assignment of errors and bill of exceptions herein to be prepared, and filed.

WHEREFORE, petitioner prays that an appeal be granted in his behalf, to the Circuit Court of Appeal of the United States, for the Ninth Circuit thereof, for the correction of the errors so complained of, and further that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeal, for the Ninth Circuit thereof.

Dated at Los Angeles, California, February 23d 1923.

John S Cooper
Lewis D Collings
George H Shreve

Attorneys for Petitioner and Appellant

[Endorsed]: No. 4253 Crim IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent, -vs- CLARENCE E. LEWIS, Defendant and appellant PETITION FOR APPEAL Bledsoe, Filed Feb. 26 1923 at — min. past — o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire, Deputy COOPER COLLINGS & SHREVE Attorneys and Counselors 1011 Washington Bldg. Los Angeles, Cal. Phone 60277

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

UNITED STATES	) No. 4253 Crim
)
Plaintiff and respondent,)
	) ORDER ALLOWING
-vs-	) PETITION FOR
	) APPEAL
CLARENCE E. LEWIS,)
)
Defendant and appellant.)

On this the 26th day of February, 1923, came Clarence E. Lewis, by his attorneys, Messrs. Cooper, Col-

lings & Shreve, and having previously filed same herein, did present to this court his petition praying for the allowance of an appeal to the United States Circuit Court of Appeal for the Ninth Circuit, intended to be urged and prosecuted by him, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent and transmitted to the United States Circuit Court of Appeal for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may seem proper;

NOW THEREFORE, on consideration thereof, this Court hereby allows the appeal hereby prayed for, and execution upon said sentence is hereby stayed, and said petitioner and appellant having moved for bond, his bond upon appeal is fixed and allowed herein in the sum of \$5000.00, which bond is to be given and approved by the Commissioner of this court. ~~And the court does further certify that all the evidence taken on the trial of said action, including the charge of said court, is incorporated in the bill of exceptions, settled and allowed by this court.~~ And that appellant give bond in the sum of \$250 for costs on appeal.

Dated at Los Angeles, California, February 26 1923.

Bledsoe

Judge

United States District Court

[Endorsed]: No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFOR-

NIA SOUTHERN DIVISION UNITED STATES,
 Plaintiff and respondent, -vs- CLARENCE E. LEWIS,
 Defendant and appellant. ORDER ALLOWING PE-
 TITION FOR APPEAL Filed Feb. 26 1923 at —
 min. past —o'clock —M CHAS. N. WILLIAMS,
 Clerk Murray E. Wire, Deputy. COOPER, COL-
 LINGS & SHREVE ATTORNEYS AND COUNSELORS 1011
 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277

IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE SOUTHERN DISTRICT
 OF CALIFORNIA, SOUTHERN
 DIVISION

UNITED STATES,	)	No. 4253 Crim.
Plaintiff and respondent,)	
-vs-	)	NOTICE OF APPEAL
CLARENCE E. LEWIS,)	
Defendant and appellant.)	

To the Clerk of the above-entitled Court, and to the
 Hon. Joseph C. Burke, United States District Attorney
 in and for the Southern District of California, and to
 said Court and the Hon. Benjamin F. Bledsoe, Judge
 thereof:

You and each of you will please take notice that
 Clarence E. Lewis, does hereby appeal to the Circuit
 Court of Appeals of the United States, for the Ninth
 Circuit thereof, from an order heretofore made on
 the 12th day of February, 1923, denying appellant's
 motion for new trial and motion in arrest of judgment,
 and from the judgment and sentence made therein
 and entered on said day.

Dated this 23d day of February, 1923.

Cooper, Collings & Shreve
Attorneys for Petitioner and appellant.

[Endorsed]: No. 4253 Crim IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent -vs- CLARENCE E. LEWIS, Defendant and appellant. NOTICE OF APPEAL Recd copy of within this 23rd day of February 1923 Mark L Herron Asst. U. S. Atty Filed Feb 23 1923 at — min. past — o'clock — M CHAS. N. WILLIAMS, Clerk Murray E. Wire, Deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELLORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

UNITED STATES,)	
Plaintiff and respondent,	)	ASSIGNMENT OF
-vs-	)	ERRORS
CLARENCE E. LEWIS,)	
Defendant and appellant.)	

Now comes the petitioner and appellant in the above-entitled action, and makes the following assignment of errors which he avers occurred in denying his motion for new trial and motion in arrest of judgment, and in the judgment and sentence herein.

I.

The court erred in denying his motion in arrest of judgment and motion for new trial; for the reason

(a) That the defendant was found not guilty upon the second count of the indictment, and the first count thereof does not charge a public offense.

(b) That the first count of said indictment does not charge any public offense for the reason that no offense could be charged in the language of said indictment.

II.

The court erred in making its rulings upon the receipt of evidence in this case, which rulings are numbered one to twenty nine, in the bill of exceptions hereby settled and allowed by this court.

III.

The court erred in charging the jury in this case, as shown by the bill of exceptions herein, exceptions numbered——to——

IV.

That the verdict is contrary to the law.

V.

That the verdict is contrary to the evidence.

VI.

That the verdict is contrary to the law and the evidence.

Respectfully submitted,

John S. Cooper

Lewis D Collings

George H Shreve

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent, -vs- CLARENCE E. LEWIS, Defendant and appellant. ASSIGNMENT OF ERRORS Recd copy of within this 23rd day of February 1923 Mark L. Herron Asst U S Atty Filed Feb 23 1923 at —min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire Deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES,)	
Plaintiff and respondent,)	
-vs-	)	BOND ON APPEAL
CLARENCE E. LEWIS,)	
Defendant and appellant.)	

KNOW ALL MEN BY THESE PRESENTS:

That we, CLARENCE E. LEWIS, as principal, and Annie Earley and Walter Earley as sureties, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors

and administrators jointly and severally by these presents.

Sealed with our seals and dated this 23d day of February, 1923.

WHEREAS, on the 12th day of February, 1923, in the District court of the United States, in and for the Southern District of California, Southern Division, an order and decree was entered on the said day, denying appellant's motion for new trial and motion in arrest of judgment, and the said Clarence E. Lewis has obtained an order allowing an appeal by the said Clarence E. Lewis, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, in the City of San Francisco in the State of California, within thirty (30) days from and after the date of said citation, which citation has been duly served;

Now the condition of the above obligation is such that should any costs be adjudged against said Clarence E. Lewis, in said appeal, he and the sureties above named will pay to the United States of America such costs as may be adjudged against said Clarence E. Lewis, in said matter, not to exceed the sum of Two Hundred Fifty (\$250.00) Dollars.

(SEAL) Clarence E. Lewis

(SEAL) Annie Earley

(SEAL) Walter Earley

Approved:

Bledsoe

Judge of the District Court of the United States. Southern district of California, Southern Division.

SOUTHERN DISTRICT OF CALIFORNIA, SS

Annie Earley and Walter Earley being duly sworn, each for himself deposes and says that he is a householder in said District, and is worth the sum of Five Hundred (\$500.00) Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

Annie Earley

Walter Earley

SUBSCRIBED AND SWORN TO before
me this 23rd day of February, 1923

(Seal)

Lewis D Collings

Notary Public in and for the County of
Los Angeles, State of California.

The form of the foregoing Bond and the sufficiency of the sureties thereto is hereby approved.

Cooper, Collings & Shreve,

By John S. Cooper

Attorneys for appellant.

[Endorsed]: No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent, -vs CLARENCE

E. LEWIS, Defendant and appellant. BOND ON APPEAL Ward 110 Filed Feb 26 1923 at — min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire, Deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELLORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277

UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF CALIFORNIA, 11

KNOW ALL MEN BY THESE PRESENTS:

That we Clarence Lewis as principal, and David Cohen and Robert R. Cook as sureties, are held and firmly bound unto the United States of America, in the sum of Five Thousand (\$5,000) Dollars, to the payment of which, well and truly to be made, we jointly and severally bind ourselves, our executors and administrators, firmly by these presents. Witness our hands and seals at Los Angeles, in said District, this 5th day of March, A. D. 1923.

The conditions of the above obligation is such that, whereas, an indictment was filed against Clarence Lewis, charging him with a violation of the Harrison Narcotic Act, and thereafter, on the 7 day of February, 1923, he was convicted of said offense, and sentenced by said court to a term of imprisonment, and whereas, thereafter, a petition was filed by said Clarence Lewis, for an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and an order allowing said appeal was made, and pending said appeal the Court made an order fixing bail in the sum of Five Thousand (\$5,000) Dollars;

NOW THEREFORE, if said Clarence Lewis shall appear and render himself amenable to any and all lawful orders and process in the premises; and if said judgment of conviction be affirmed, or said appeal dismissed or not prosecuted, and said Clarence Lewis renders himself amenable to said judgment of conviction and renders himself in execution thereof, then this recognizance be void; otherwise to remain in full force and effect.

Clarence E. Lewis, (Seal)

David Cohen (Seal)

Robert R Cook (Seal)

SOUTHERN DISTRICT OF CALIFORNIA, SS

David Cohen and Robert R. Cook being duly sworn, each for himself deposes and says, that he is a householder in said District, and is worth the sum of Five Thousand (\$5,000.00) Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

Clarence E. Lewis. (SEAL)

Subscribed and Sworn) David Cohen (SEAL)
to before me this 5th) 4076 Leewood Ave
day of March, 1923) Robert R. Cook (SEAL)

1529 E 12th

Seal

Stephen G. Long.

United States Commissioner for
the Southern District of Cali-
fornia

[Endorsed]: No. 4253 Crim. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION UNITED STATES Plaintiff and respondent -vs- CLARENCE E. LEWIS Defendant and appellant. BOND ON APPEAL Approved Bledsoe J 3/5/23 Filed Mar 5-1923 at — min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire. Deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277.

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

UNITED STATES,)	
Plaintiff and respondent,)	
-vs-	)	PRAECIPE
CLARENCE E. LEWIS,	)	(For transcript of
Defendant and appellant.)		record)

To CHARLES N. WILLIAMS, Clerk of the District Court of the United States, Southern District of California, Southern Division:

SIR:

Please make up transcript of appeal in the above-entitled case to be composed of the following papers:

1. Citation on appeal.

2. Copy of the indictment herein, together with a copy of your minutes concerning all the proceedings in this case.

3. Copy of the bill of exceptions herein.

4. Petition on appeal.

5. Order allowing appeal.

6. Notice of appeal.

7. Assignment of errors.

8. Praecipe.

9. Certificate of Clerk.

10. Bond on appeal.

Dated, February 23d 1923

Cooper, Collings & Shreve

Attorneys for Petitioner and Appellant.

[Endorsed]: No. 4253 Crim IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES, Plaintiff and respondent, -vs- CLARENCE E. LEWIS, Defendant and appellant. PRAECIPE Filed Jul 9 1923 at —min. past —o'clock —M CHAS N. WILLIAMS, Clerk L. L. Aronson Deputy COOPER, COLLINGS & SHREVE ATTORNEYS AND COUNSELORS 1011 WASHINGTON BLDG. LOS ANGELES, CAL. PHONE 60277

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

United States,)
Plaintiff and Appellee)
vs.)
Clarence E. Lewis,)
Defendant and Appellant)

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 85 pages, numbered from 1 to 85 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the defendant-appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation on appeal; copy of the indictment, with a copy of the minutes concerning all the proceedings; copy of the bill of exceptions; petition on appeal; order allowing appeal; notice of appeal; assignment of errors; praecipe, and bond on appeal.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the plaintiff-in-error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of , in the year of our Lord One Thousand Nine Hundred and Twenty-three, and of our Independence the One Hundred and Forty-eighth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of California.

By

Deputy.

